

NO. 21088

United States
Court of Appeals
for the Ninth Circuit

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ROBERT LEWIS BANZER,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

*On Appeal from the United States District Court
for the District of Oregon*

BRIEF OF APPELLEE

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District of Oregon

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BRIEF OF APPELLEE

COUNTER-STATEMENT OF THE CASE

On October 4, 1965, an indictment in six counts was filed against appellant Banzer in the United States District Court for the District of Oregon. (See Clerk's transcript of record, page 1). The indictment alleged that on or about December 8, 1964, appellant knowingly and willfully caused to be trans-

ported in interstate commerce, to-wit: from Portland, Oregon to Seattle, Washington certain falsely made and counterfeited securities, in violation of Section 2314, Title 18, United States Code. After a trial by jury, appellant was found guilty on each count. On March 9, 1966, appellant was sentenced by the Honorable John F. Kilkenny to a concurrent prison term of five years on each count.

The evidence to support the verdict of guilt may be summarized as follows:

In late 1964, appellant requested Jack Stevenson and David Hildebrand to assist him in setting up a counterfeit check printing and cashing operation in Portland. (R. 4, 9, 59-60) Shortly thereafter, appellant contacted one Ralph Tolle and requested his assistance in starting an "advertising agency" in Portland which was to serve as a base for the counterfeiting operation. (R. 84). At appellant's request, Tolle leased in his own name a printing press and other photographic equipment which was installed by him, appellant and Stevenson in a building in Southeast Portland. (R. 7-8, 85). Appellant utilized the equipment to print a quantity of counterfeit blank checks of the Safeco Lifeco Insurance Company located in Seattle. (R. 11-12, 60-61). After

printing these checks, appellant took them home to his wife, who typed in fictitious dates, payees and amounts. (Exs. 2-7; R. 12-13) In early December, 1964, appellant instructed Stevenson and Hildebrand to go to Seattle and cash the checks, after which appellant was to get an agreed percentage of the proceeds. (R. 16, 61)

Stevenson and Hildebrand, together with a girl by the name of Caroline Young, left for Seattle the next day and cashed the checks at various shops in Seattle by utilizing counterfeit Washington drivers' licenses which had also been printed by appellant. (R. 12, 14-30, 48-55, 61-66). After returning to Portland, Stevenson and Hildebrand turned over a portion of the proceeds of these checks to appellant. (R. 65-67).

ARGUMENT

There Was No Prejudicial Error in the Proceedings Below

- 1. The trial court correctly granted the government's motion to amend the indictment.**

Appellant complains (BR. 2-3) that prejudicial error was committed when the trial court, at the outset of the case (R. 1), granted the government's

pre-trial motion to amend certain wording in three counts of the indictment. Appellant has not and cannot make any assertion that the government did not inform him of these minor errors well prior to trial. Nor has appellant suggested that he was in any way prejudiced by these amendments in preparing his defense. Appellant's sole complaint is that these amendments so "broadened and altered" (BR. 3) the indictment that they could only be made by the grand jury. We respectfully suggest that the argument is so thin as to be almost frivolous. The amendments, which pertained to three counts of a six count indictment, were as follows: the date on the counterfeit check in Count One was changed from November 24, 1964, to December 4, 1964, and the amounts of the counterfeit checks in Counts One, Three and Five were changed from \$98.27, \$98.48 and \$98.40 to \$98.23, \$98.46 and \$98.48 respectively, a net difference of fourteen cents. It is patently obvious, as the trial court noted (R. 1), that these were simply clerical errors relating to matters of form and not substance, and which in no way resulted in changing the theory of the government's case. *United States v. Krepper*, 159 F.2d 958, 970-972 (C.A. 3), certiorari denied 330 U.S. 824. Accordingly, the amendments were properly allowed.

Moreover, even if we assume *arguendo* that the amendments were improperly granted, it is fundamental that, since the sentence on the six counts of the indictment were ordered to run concurrently, and since the remaining three counts of the indictment are not attacked by appellant and are clearly valid, the conviction on these latter counts must be sustained. *Hirabayashi v. United States*, 320 U.S. 81, 85.

2. The trial court properly received into evidence Government Exhibit 1.

There is no merit to appellant's claim (BR. 3-4) that Government Exhibit One was improperly admitted into evidence. Briefly summarized, the testimony preceding the introduction of this exhibit into evidence — as related by government witness Jack Stevenson — is as follows: (R. 4-6)

In October of 1964, Stevenson had fallen down the stairway at the Lipman-Wolf Department Store in Portland. In connection with his insurance claim against this store for the accident, Stevenson was sent two checks, one payable to him and the hospital where he received medical attention, and the other (Govt. Ex. 1) payable to him and the Buck Ambulance Co. These were checks or drafts of the

Safeco-Lifeco General Insurance Company of America. Appellant was with Stevenson at the time he received these checks, and appellant asked Stevenson for one of these checks so he could make a duplicate to later use in his counterfeit operation. Stevenson turned over to appellant the check made out to the hospital, and retained the check made out to the Ambulance Company (Govt. Ex. 1) which he cashed. This latter check (Govt. Ex. 1) was substantially identical to the one turned over to and copied by appellant except for the name of the payee and the amount. Accordingly, this check was clearly admissible for the simple purpose of giving the jury some background concerning appellant's method of operation.

3. The evidence was sufficient to support the verdict.

Appellant does no more than raise an argument (BR. 4-5) that the trial court erred in not granting his motion for acquittal based on alleged insufficiency of proof. As shown in the statement of the case above, the evidence — viewed in the light most favorable to the government — overwhelmingly demonstrated appellant's guilt. Appellant initiated the counterfeiting scheme, printed the fictitious checks and identification documents, instructed his cohorts as

to when and where to cash the checks, and shared in the illicit proceeds. Appellant offered no testimony or any other evidence in defense, and the trial court was clearly correct in denying the motion for acquittal.

CONCLUSION

There was no prejudicial error in the proceedings below. The trial was fair and the evidence of guilt was overwhelming. It is respectfully submitted that the judgment of conviction should be affirmed.

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United States Attorney

District of Oregon

NORMAN SEPENUK,

Special Asst. United States Attorney

CERTIFICATE

I certify that in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that in my opinion, the foregoing brief is in full compliance with those rules.

Date: 3rd day of August, 1966.

NORMAN SEPENUK,
Special Asst. United States Attorney

